

**ANNEX XII to the  
Memorandum of Agreement between  
the Transportation Security Administration and  
the Federal Aviation Administration**

**AVIATION WHISTLEBLOWER PROTECTION PROGRAM**

1. Purpose. The purpose of this Annex is to facilitate investigations related to aviation security and other matters of air safety, based on information provided by protected employees under the Whistleblower Protection Program, 49 U.S.C. § 42121 (the Whistleblower Protection Program). This annex is intended to ensure that allegations of safety or security violations contained in whistleblower complaints are investigated by the appropriate Party in a timely manner and that the Parties share, in a timely manner, information related to the missions of the Parties that is developed during investigations. The portions of this annex providing for the FAA's participation in the exchange of information between TSA and the U.S. Department of Labor are interim measures and the Parties anticipate their deletion after the statutory change described in paragraph 3g and TSA and the U.S. Department of Labor effect a Memorandum of Understanding that provides for the direct exchange of such information.
2. Background. FAA, TSA, and the Secretary of Labor's delegate--the Occupational Safety and Health Administration (OSHA)--each have responsibilities related to 49 U.S.C. § 42121.
  - a. FAA investigates complaints related to aviation safety and enforcement of its air safety regulations. FAA also may issue civil penalties for violations of 49 U.S.C. § 42121, pursuant to 49 U.S.C. § 46301(a)(1).
  - b. TSA investigates complaints related to aviation security and enforcement of its aviation security regulations under the Aviation and Transportation Security Act, ("ATSA"), Pub. L. 107-71, 115 Stat. 597, et seq. (2001).
  - c. OSHA has the responsibility to investigate employee complaints of discrimination and may order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney fees.
3. Definitions. As used in this Annex:
  - a. The term "coordinate" means to take action which provides reasonable notice of an agency's activities and which affords the notified agency, when possible, a reasonable opportunity to address concerns raised by such notice.
  - b. The term "reasonable notice" means as soon as possible, preferably prior to action, without placing an activity in jeopardy.

4. Coordination. The Parties agree to follow these procedures relating to whistleblower complaints and investigations:

a. The Parties will designate and maintain a point of contact within their national headquarters who will be responsible for implementing this annex.

b. In the event that TSA receives directly from an individual or from his or her representative a document appearing to be a complaint under the Whistleblower Protection Program, TSA agrees to notify promptly FAA's designated point of contact and to forward to FAA's designated point of contact on request a copy of the document, with all attachments and enclosures.

c. Upon FAA's receipt of a document appearing to be a complaint under the Whistleblower Protection Program that relates to aviation security, FAA agrees to notify promptly TSA's designated point of contact and to forward to TSA's point of contact on request a copy of the document, with all attachments and enclosures.

d. TSA will continue to provide to the U.S. Department of Labor technical expertise and the investigative services, resources, and testimony necessary to educate U.S. Department of Labor investigators, supervisors, attorneys, and administrative law judges regarding aviation security matters that bear on the subject of Whistleblower Protection Program complaints.

e. TSA agrees to provide FAA's designated point of contact the preliminary results of any investigation of complaints received pursuant to paragraph 2 or 4 of this Annex within forty-five (45) days after commencement of the investigation. FAA will advise the U.S. Department of Labor of potential security violations revealed during TSA investigation.

f. In addition to the requirement for TSA to provide the results of all aviation whistleblower complaint investigations to FAA for transmittal to OSHA, the Parties further agree to share all information that the Parties obtain relating to each complaint and investigation that may affect each other's mission and to protect information that either Party deems confidential to the extent permitted by applicable law, including the Privacy Act.

g. The Parties agree to coordinate their efforts to obtain a change in the law to direct OSHA to notify TSA of any whistleblower complaints it receives relating to air carrier security, but will continue to coordinate with each other on all information each Party receives that affects the other Party's responsibilities.

h. With respect to actions requiring departmental approval, in addition to the coordination described above, if either Party engages in activities which could ultimately result in an action requiring the approval of the head of the Department in which either

Party operates, the Parties will follow any applicable Departmental approval and coordination policies.

5. Points of Contact. In initiating coordination required by this Annex, each Party's point of contact, or that point of contact's designee, will coordinate with the other Party's point of contact, or their designee. Subject to updates by the Parties, the following persons will constitute points of contact with respect to this Annex.

TSA:

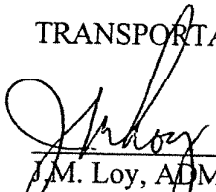
Assistant Administrator for Aviation Operations  
Transportation Security Administration  
TSA Headquarters  
701 South 12<sup>th</sup> Street  
Arlington, VA 22202

FAA:

Manager, Whistleblower Protection Program  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20591

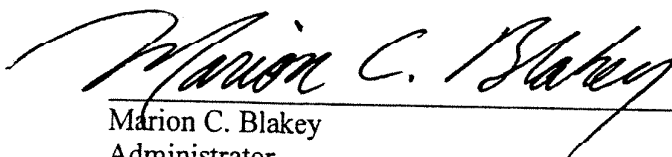
APPROVED BY:

TRANSPORTATION SECURITY ADMINISTRATION

  
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J.M. Loy, ADM  
Under Secretary of Transportation for Security

2/28/03  
Date

FEDERAL AVIATION ADMINISTRATION

  
\_\_\_\_\_  
Marion C. Blakey  
Administrator

2/28/03  
Date